IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 113 of 1994

The State of Maharashtra ..Appellant

V/s

Ashok Hanmant Atkar

r/o Kurghot, Tal.South Solapur

District Solapur ..Respondent

Smt.V.R.Bhosale,APP for Appellant

Shri A.R.Yadav for Respondent

CORAM:S.S.PARKAR AND

S.R.SATHE,JJ.

DATED:26th September 2005

ORAL JUDGMENT :- (Per S.R.Sathe,J)

1. The State of Maharashtra has preferred this appeal against the judgment and order passed by the Court of 2nd Additional Sessions Judge, Solapur in Sessions Case NO.300 of 1992, whereby, the accused was acquitted of the offence punishable under Section 302 of IPC for having committed murder of Sonabai Sidhappa Neknare, Rajashree daughter of Sidhappa Neknare and her daughter Rukasana and Section 135 of Bombay Police Act.

2. Brief facts giving rise to this appeal are as under:

. Deceased Sonabai was the paternal aunt of the accused. The marriage of Rajashree had taken place with one Jagdeo Shamrao Atkar, cousin brother of accused Ashok Hanmant Atkar. However, Rajashree and her husband could not pull on well and their divorce took place about 4 years prior to the incident. Thereafter Rajashree was residing at village Khurghot. One Saipan was serving in the field of Daula Qureshi at Kurghot. Rajashree came in contact with Saipan and love affair developed in between them. Not only that but Saipan took her to Kumatha. At that place Rajashree delivered a female child from Saipan.

3. In the month of July 1992 for Moharam Rajashree had come to her mother Sonabai at village Khurghot. On 15-7-1992 at about 7-00 a.m. prosecution witness no.1 Papamiya, Sarpancha of village Khurghot was sitting on the platform (Katta) in front of Grampanchayat office. At that time he heard some shout of a woman. He, therefore, looked towards the said direction. He found that Rajashree had fallen on the road near the house of PW 3 Sidram Mote and accused Ashok was proceedings towards his house with an axe in his hand. Ashok was on half pant and banian and the axe was stained with blood. When PW 1 Papamiya reached near Rajashree he found that Rajashree had sustained injuries on her head and neck, and her daughter Ruksana was also lying at the said place and sustained grievous bleeding injury. At that time he noticed that some persons were proceedings

towards a lane which was near from the place where Rajashree was lying. PW no.1 Papamiya therefore went to that lane and he found that Sonabai was lying near neam tree in a pool of blood and had sustained injuries. Kotwal of the village viz. Laxman Koli PW 4, arrived at the said place. Prosecution witness no.3 Sidharam Mote also met Papamiya at the said place and he told him that accused was chasing Rajashree and when he accosted him he gave threat to him and as such he went aside and immediately accused Ashok assaulted Rajashree with an axe which was already blood stained. As a result of the said assault, Rajashree fell on the ground. PW 1 Papamiya sent Kotwal to inform the Police about the incident. Accused also gave axe blow to the child of Rajashree and she also died. On receipt of the information about the incident from village Kotwal, Police from Mandrup Police Station made an entry in the Station diary. Then PSI Jadhav went to Khurghot. After reaching the said place, he started making enquiry about the incident. Dog squad was also called. One chappal pair was lying near the dead body of Sonabai. Dog "Kishor" sniffed the chappal and took round around the spot and went towards the western side upto 1 k.m. and stopped near the house of accused. Accused was present in the house. The dog pounced on the accused. The Police Constable Vishnu Shinde, trainer of the said dog then prepared a report Exh.22 and after obtaining signature of PSI Jadhav on the same, he sent the said report to CID, Crime, Pune. PSI Jadhav then filed a complaint on behalf of State at Mandrup Police Station at 11-30 p.m. Police then drew inquest

panchanama and sent the dead bodies for post mortem. Panchanama of place of offence was also drawn. They arrested the accused and attached clothes which were on his person. After recording the statements of witnesses and obtaining C.A. report in respect of attached articles Police completed the investigation and submitted the charge sheet against the accused for the offences punishable under Section 302 of IPC and Section 135 of Bombay Police Act, in the Court of Chief Judicial Magistarte, Solapur.

4. Finding that the accused was charge sheeted for the offence punishable under Section 302 of IPC which was exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, solapur committed the case to the Sessions court, Solapur.

5. The 2nd Additional Sessions Judge, Solapur framed charge Exh.3 against the accused. The charge was read over and explained to the accused. Accused pleaded not guilty to the said charge and claimed to be tried. From the suggestions put to the PWs and the statement of the accused recorded under Section 313 of Criminal Procedure Code it appears that the defence of the accused was of total denial. It was his contention that in the village there were two political groups, accused was belonging to one group and Sarpancha Papamiya was belonging to another group. So, as a result of this faction the accused was falsely involved in the case by PW 1 Papamiya, Sarpancha of the said village.

6. In order to bring home the guilt of the accused the prosecution examined as many as 12 witnesses consisting of:

i. PW 1 Papamiya Saheblal Pirjade Exh.10,

ii. PW 2 Chandrakant Baburao Birajdar Exh.17,

iii PW 3 Sidhram Daryappa Mote, alleged eye witness to the incident Exh.18,

iv. PW 4 Dhutalsidha Revappa Kale Exh.19, who drew map of the place of offence,

v. PW 5 Police Head Constable Vishnu Govind Shinde Exh.21, trainer of dog squad,

vi. PW 6, Laxman Ramchadnra Koli, Kotwal of village Kurghote, Exh.23, who gave information about the said incident for the first time,

vii PW 7 Mahiboob Hasan Shaikh, Exh.24,

viii PW 8, Vithal Ana Jadhav, Investigating Officer,

ix PW 9 Pancha witness Abdul Kadar Gulab Shaikh, who has acted for pancha for attachment of clothes of deceased Exh.33,

x PW 10 Arun Narayan Kundargi, Special Judicial Magistrate, who recorded the statements of witnesses under Section 164 of Criminal Procedure Code, and

xi PW 11 Shrirang Ganpat Kamble, who carried attached articles to C.A. Exh.39.

xii PW 12 Prakash Mutyal, the Investigating Officer Exh.40.

7. The prosecution also produced certain documents such as inquest panchanama of dead body of Sonabai at Exh.11, Inquest panchanama of dead body of Rajashree Exh.12, Inquest Panchanama of dead body of Rauksana Exh.13, spot panchanama Exh.14, panchanama of dog tracking and attachment of clothes of accused and axe Exh.15, Panchanama of attachment of bicycle Exh.16, sketch of place of offence Exh.20, Post mortem notes Exhs 25 to 27, the complaint filed by PSI Jadhav Exh.32, panchanama of attachment of clothes of deceased Sonabai, Exh.34 and C.A. reports Exhs 44 and 45. The accused did not adduce any defence evidence but only produced his written say at Exh.46 while recording statement under Section 313 of Cri.Procedure Code.

8. After considering the entire evidence on record the learned trial Judge came to the conclusion that testimony of PW 1 Papamiya Pirjade and alleged eye witness PW 3 Sidram Mote Exh.18 is not trustworthy. The conduct of the said witnesses was unnatural and it created doubt about

their version. The learned trial Judge also observed that there were discrepancies in the evidence with regard to dog tracking and alleged recovery of articles viz. clothes of the accused and axe. Thus, according to the learned trial Judge, the prosecution failed to prove beyond reasonable doubt that the accused committed murder as alleged. He, therefore, acquitted the accused of the offence punishable under Section 302 of I.P.C.

9. Being aggrieved by the above mentioned order, the State of Maharashtra has filed the present appeal. In this appeal before us Smt.Bhosale, learned APP has urged four points. Firstly, she submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly discarded the testimony of PW1 Papamiya Pirjade and eye witness Sidram Mote Exh.18. Secondly, she canvassed that there was evidence with regard to dog tracking. After the chappals which were on the spot were sniffed by the dog it had reached to the house of the accused and pounced on him, she therefore submitted that the learned trial Judge ought to have accepted the said evidence. Thirdly, she argued before us that the learned trial Judge ought to have relying upon the evidence with regard to attachment of the clothes of the accused and recovery of an axe. Lastly, the learned Advocate for the Appellant submitted that blood belonging to the group of deceased was found on the clothes of the accused and as such there was sufficient material to convict the accused. She, therefore, submitted that appeal be allowed and

accused be convicted for the offence punishable under Section 302 of IPC.

10. As against this, Shri Yadav, learned Advocate for the accused supported the judgment and order passed by the trial Court and submitted that evidence of PW 1 Papamiya Pirjade and alleged eye witness Sidram Mote Exh.18 is not consistent. There are several omissions and contradictions in their evidence. The discrepancies in panchanama of dog tracking and panchanama regarding place of offence have been rightly noticed by the Court and the learned trial Judge has correctly held that there was no sufficient evidence to prove beyond reasonable doubt the guilt of the accused. He also submitted that view taken by the learned trial Judge while acquitting the accused was certainly a possible view and considering the well settled position of law in respect of appeal against the acquittal there is no need to interfere with the order passed by the learned trial Judge. He, therefore, submitted that the appeal be dismissed.

11. It is not in dispute that Rajashree was married to one Jagdeo, cousin brother of accused and divorce had taken place between Jagdev and Rajashree about 4 years prior to the incident. It is also not disputed that Rajashree had a daughter from Saipan. It is an admitted fact that on 15-7-1992 when Laxman Koli, Kotwal of the village went to the place of offence he found dead body of Sonabai lying near Nim tree, opposite to his house while the dead body of

Rjashree was found near the house of Sidram Mote. Rajashree’s daughter’s dead body was also seen near the dead body of Rajashree. Admittedly, the inquest panchanamas were drawn by Police at Exhs 11 to 13 and at that time several incised wounds were noticed on dead bodies. In the post mortem notes. Exhs 25 to 27 in column No.17 following injuries are mentioned.

. In the case of Rajashree (Exh.25) -

i) chop wound on the scalp at occipital region, 6" x 1 1/2", bone deep, transverse Z skull brain tissue coming out.

ii) chop wound on Rt posterior lateral aspect of neck, 1 1/2" below above injury, 4’ x 1 1/2" spine deep Z spine transverse,

iii) chop wound on left lateral aspect of neck, 3"x 1" spine deep, transverse

iv) chop wound on top of RH shoulder 3" x 3" joint expound Z Rt clavicle scapular process
all above injuries are having clean margins.

. In the case Ruksana Exh.26

i) chop wound on the neck head separated from the body spine, attached only Z flap of skin, margins clean.

. In the case of Sonabai Exh.27.

i) chop wound on Rh post. aspect of neck, 6"x 3" spine deep Z # spine transverse Z clean margins

ii) chop wound at nape - neck mid scapular region 3" x3" spine deep Z # spine, transverse Z clean margins

iii) Abrasion on the back left in frascapular region 3" x2", brown

iv) chop wound on anterior aspect of neck near left sterno - clavicles joint 2" x 2" bone deep Z # clavicle left, oblique Z clean margins.

12. Even from the nature of these injuries one can safely conclude that the death of the above mentioned 3 deceased was homicidal. It must also be noted that in postmortem notes the doctor has opined that the cause of death was shock due to haemorrhage due to chop wounds.

13. In view of above evidence, we have no hesitation to hold that death of above mentioned three deceased was homicidal. In fact, it is not even the contention of the accused that death of above mentioned 3 deceased was not homicidal.

14. The main and material question is whether the said

deaths have been caused at the hands of the accused. In order to prove the same, the prosecution is relying on direct evidence as well as circumstantial evidence.

15. The prosecution has examined PW 1 Papamiya Pirjade Exh.10 to show that at the relevant time accused was actually seen with an axe in his hand at the place of offence when Rajashree had fallen on the ground. The said witness has stated that on 15-7-1992 in the morning he was sitting on the platform (**katta)** in front of Grampanchayat office while one Dada Badshah was sitting in the hotel near to Grampanchayat. At that time he heard shout 'DOSTARAHODDIN'. He therefore looked towards the direction from which he heard the shout. He found that Rajashree had fallen down and accused was near her with an axe in his hand. He therefore, along with Dada Badashah went towards the place where Rajashree was lying. At that time accused was proceedings towards his house. He has also stated that at that time accused was only wearing banian and half pant. There were blood stains on the said clothes. He noticed that Rajashree as well as her daughter had sustained bleeding injuries. He has stated that at that very time he found that some persons were proceedings towards the lane. Naturally, he also went there and he found that dead body of Sonabai was lying near Neam tree, opposite to her house. At that place PW 3 Sidram Mote met him. He therefore enquired with him about the incident and Mote told him that he saw accused chasing Rajashree and hence he accosted the accused, but accused gave threat to him and hence he went

aside but immediately thereupon the accused assaulted Rajashree and her daughter with an axe and both of them fell on the ground. The said witness has also stated that when Police arrived at the place of offence he was present there and he acted as a panch for the panchanama of the dog tracking and attachment of clothes of the accused,. The learned A.P.P. argued before us that this witness was working as Sarpanch of the village at the relevant time and there was no reason for him to depose against the accused. However, if we carefully read the evidence of Papamiya Pirjade we find that he is belonging to one political group while accused is belonging to other rival political group and admittedly there was faction in the said village. So, it cannot be said that there was no any reason for Papamiya Pirjade to depose against the accused. However, apart from this, what is necessary to be seen is whether the evidence of Papamiya Pirjade inspires confidence. While considering this aspect we have to take into consideration the admissions given by him in the cross examination and his conduct. Firstly, it must be noted that as per his version, on the day of incident at about 7-00 a.m. he was sitting on platform (**Katta)** in front of Grampanchayat office. He himself has admitted that at that time he had no work in grampanchayat office. Admittedly every day in the morning he used to go to his field for work.So, normally it is difficult to believe that he alone was sitting on the platform (**Katta**) at that time. so, the presence of the said witness at the relevant time, at the place of offence itself appears to be doubtful. However,

assuming for the sake of argument that he was sitting on the platform (**katta**) at the relevant time we have to see his further conduct and decide whether the same is consistent with his statement that he had been the accused in such condition. It has cross examination has said:

> "It is not true to say that I did not say before Police that when I saw towards the directions of noise, I saw that Rajashree lying on the ground.I cannot assign any reason as to why my police statement is silent in this behalf. It is not true to say that I did not say before police that when I went near Rjashree I saw accused going towards his house with axe. I cannot assign any reason as to why it is not so recorded in my police statement".

. Incidentally, it must be noted that even the Investigating Officer Vithal Jadhav, Exh.28 has stated :

> "It is true that Papamiya did not state that when he saw towards the direction of noise, he saw that Rajashree was lying on the ground. It is true that Papaimiya did not state before me that when he went near Rajashree, he saw accused was going towards his house with an axe. Papamiya did not state before me that his clothes were stained with blood".

16. So, the above admissions clearly indicate that witness Papamiya has made an improvement while deposing in the

court. Besides this, he himself has stated that though he had seen accused in such condition and had immediately reached at the place where dead body of Sonabai was lying and at that place Kotwal had met him but he did not disclose to Kotwal that he had seen the accused near Rajashree and at that too with blood stained axe. Not only that, but he has also admitted that though at the relevant time there were about 5/50 persons assembled near the dead body of Sonabai he did not disclose them that just few minutes before he had seen the accused near Rajashree and that he was having blood stained axe in his hand. This conduct of Papamiya, Sarpancha is highly unnatural, abnormal and as such doubtful. We cannot ignore the fact that he was not an ordinary person but Sarpancha of the village. Kotwal of the village had met him at the said place and he had in fact sent Kotwal to Police Station for giving information. When such was the position if he had really seen the accused with an axe in his hand, then certainly, he would have disclosed the said fact to Kotwal as well as to the persons who had gathered at the place of offence. But this has not happened.

17. PW 1 Papamiya has also stated that at the relevant time he and Dadabadsha went towards Rajashree and at that time Ashok i.e. accused was proceedings towards his house with an axe in his hand. So, this suggests that it was not only PW 1 Papamiya but other person viz. Dadabadsha had also seen the accused with n axe in his hand. However, curiously enough we find that the prosecution has not

examined the said Dadabadsha. So, this also creates some doubt about the version of PW 1 Papamiya.

18. PW 1 Papamiya has stated that on that day after the arrival of Police he was with them only for about 45 minutes but at the same time he has stated that he acted as pancha for all 3 inquest panchanamas as well panchanama for dog tracking, and attachment of clothes of the accused and axe. It is clear from the said panchanamas that same have been drawn on 17-7-1992 between 13-00 hours to 16-45 hours. So, this obviously shows that PW 1 Papamiya is not giving true facts. So, under such circumstances the learned trial Judge has rightly held that the evidence of PW 1 Papamiya is not trustworthy and sufficient to prove the guilt of accused.

19. Another important witness on which prosecution is heavily relying is PW 3 Sidhram Mote Exh.18, alleged eye witness to the incident. Admittedly,the said witness is having his house and cattle shed near from the place where Rajashree was lying. It is his version that at the relevant time he was cleaning his cattle shed and when he heard shout of a lady, he kept the broom at the cattle shed and went out of it and he found that Rajashree was running with her daughter in her arms and accused was chasing her. He therefore accosted accused but accused gave a threat and as a result of the same he went aside and thereafter immediately the accused gave blows with an axe on Rajashree’s head and neck as well on the neck of daughter

of Rajashree. However, it must be noted that the location of his house and cattle shed is such that even if one stands in front of the house or in front of the cattle shed the road and in particular, the place where Rajashree was lying is not visible. He himself has admitted accordingly in his cross examination. So, in order to reach the place where Rajashree was lying it must be seen whether the said witness had in fact really heard some cry of a lady and as such he had gone towards that direction. While considering this aspect, we find that the said witness himself has admitted in his cross examination that in his statement before police, there is no mention of the fact that at the relevant time he heard the shout of a lady and as such he went out of the cattle shed. So, it appears that this witness has also made an improvement while deposing in the Court.

20. Besides this, the said witness has clearly admitted that though he had seen the above mentioned incident he did not disclose the said fact to anyone on that day except Papamiya. On the next day evening when he was called by Sarpancha in grampanchayt office, he gave a statement before Police that at the relevant time he had seen accused giving blows to Rajashree. Admittedly, when Police had gone to the place of offence he was present there. He has also admitted that at the relevant time Police were making enquiry with the villagers about the incident. If really he had seen the incident in question then certainly he would have immediately told the police about the same at

that very time, but we find that he did not do so. Not only that but if rally he had disclosed the said incident to Sarpanch Papamiya then surely Papamiya would have informed Police about the same. But this has also not happened.

21. In the instant case the statement of this witness was recorded by Special Judicial Magistrate after three months. So, it was suggested to him that he had neither stated before Police nor before the Special Judicial Magistrate that he had met Papamiya Sarpancha near the dead body of Sonabai and at that time Papamiya asked him as to what happened and he told him that accused Ashok killed Rajashree and her daughter. However, if we see his cross examination he has stated:

> "it is not true to say that I did not state before the Police and Magistrate that I came out of the cattle shed hearing the shout of lady. I cannot assign any reason as to why both these statements are silent about this. It is not true to say that I did not state before Police and Magistrate that I met Papamiya Sarpancha near the house of Sonabai. I cannot assign any reason as to why both statements are silent about this. I did not state before Police and Magistrate that Sarpancha Papamiya had asked me what is the matter".

22. The said witness has stated that after the incident he

was sleeping at home till evening. On the next day morning he went to his work and after he returned home he was called in grampanchayat office. He has also stated "It is true that it was my first disclosure to the Police regarding the incident".

23. Thus the conduct of this witness viz. not disclosing the name of assailant to anyone including Police though the Police were in fact enquiring with the villagers regarding the assailant and keeping mum for a period of about 2 days creates grave doubt about his testimony. In fact the learned Advocate for the defence has brought to our notice a case of **Naba Kumar Das V/s State of West Bengal AIR 1974 SC 777**, where, in similar circumstances the eye witness had not disclosed the name of the assailant for a period of about 20 hours, though he had met several persons during that period at several places and so the Apex Court held that testimony of such person cannot be held to be reliable. So, this authority also supports the defence version.

24. There is another piece of evidence which also negatives the case of prosecution that PW 1 Papamiya had seen the accused near Rajashree with blood stained axe in his hand and that PW 3 Sidhram Mote Exh.18 had actually seen the accused while assaulting Rajashree and her daughter with axe. If we see the relevant station diary entry which is at Exh.31 we find that it is clearly mentioned in the same that Koli i.e. Kotwal of the village

informed that "somebody" committed murder of Sonabai, Rajashree and Ruksana. As mentioned earlier, if really the above mentioned two witnesses had seen the accused they would have definitely told the said fact to Koli, whom Papamiya had sent to Police station for giving information about the said incident. So, this also suggests that testimony of the above mentioned two witnesses is not reliable.

25. It is the prosecution case that even PW 7 Mehabub Shaikh Exh.24 had actually seen the accused while assaulting Sonabai. However, it is pertinent to note that said witness did not support the prosecution and as such he was declared hostile. Naturally his evidence is also of no use to the prosecution.

26. Turning to the question of circumstantial evidence, we find that prosecution is relying on the panchanama (Exh.5) for attachment of axe and clothes of accused from the house of the accused. From the perusal of the said panchanama it appears that Police wanted to make out a case of discovery of the said articles at the instance of the accused. However, the panch witness viz. Papamiya Exh.10 has stated that on that day when he along with Police and dog squad had gone to the house of accused, police attached the axe which was in the house of the accused and also seized banian and half pant which were on the person of the accused. Thus we find that there are discrepancies in the

oral testimony of pancha witness and contents of panchanama. Moreover it is really very difficult to belive that accused who had tried to run away from the place of offence would not take care to remove the blood stained clothes and would remain in the same clothes till afternoon. So, discovery or even recovery of the above mentioned articles is not duly proved and evidence in that behalf is doubtful.

27. It has come on record that blood group of accused was "O" and blood group of Rajashree's daughter Ruksana was also "O", while blood group of Sonabai must be "B". From the C.A. report Exh.45, it appears that human blood was noticed on the axe and it had shown reaction for both the blood groups i.e. "B" and "O". Similarly blood of O group was found on the banian and underpant of the accused. Once it is held that evidence with regard to attachment of the above mentioned articles is not trustworthy the evidence with regard to C.A. report looses its importance and it has to be discarded.

28. Another important evidence on which the prosecution is heavily relying is the evidence with regard to dog tracking. Before considering the evidence in that behalf, it would be worthwhile to see what the Apex Court has observed about such evidence. In **Abdul Razak Murtaza Dafadar V/s State of Maharashtra - AIR 1970 (SC) Page 283** it is observed:

> "The tracker dog's evidence cannot be likened to the type of evidence accepted from scientific experts

> describing chemical reactions, blood test and the action of bacilli contains no element conscious volition or deliberate choice. Dogs are intelligent animals with many though processes there is always the risk of error, deception and even self deception. In the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight"

It is prosecution case that when the Police came to know about the incident in question, dog squad was called and PW 5 Police Constable V.G.Shinde Exh.21, who was working as a trainer of the dog "Kishore" had reached to the place of offence at 9-45 a.m. on 15-7-1992 and after reaching there PHC Shinde directed the dog Kishore to sniff pair of **chappal** which was lying near the dead body of Sonabai. After the said slipper was sniffed the dog took round around the dead body of Sonabai and then went to the house of accused which was at a distance about 1 k.m. from the place of offence. When accused was seen in the house, the dog pounced on the accused. The Police head Constable Shinde therefore prepared a report Exh.22 to that effect and also obtained signature of the PSI Jadhav on the same. Firstly, it has to be mentioned that evidence with regard to panchanama of dog tracking is not consistent. Police Head Constable Shidne Exh.21 has stated that by 10-30 a.m. mission of dog tracking was over on that day. If we see the report Exh.22 prepared by the said Police Constable then it appears that dog tracking work was over by 11-30 a.m..Again some different time is mentioned in pencil which is 2-30 to 4-00 p.m. but O.C. of the report shows that timing informed to CID Crime, Pune was 11-30 a.m.

29. If we see the panchanama in this behalf which is at

Exh.15, it appears that dog tracking was done between 3-35 p.m. to 4-45 p.m. So, this discrepancy in respect of panchnama with regard to dog tracking creates grave doubt about its genuineness.What is more to be noted is that in the panchanama of the place of offence Exh.14 which is drawn between 2-45 p.m. to 3-30 p.m. it is mentioned that one pair of **chappal** was found near the dead body of Sonabai and Police attached the same and took it in their possession. However, it is also mentioned in the said panchanama that as there was doubt that the said pair of chappal was of the assailant, the said pair of **chappal** was kept at the same place. However the pancha witness Papamiya has clearly stated that at the relevant time he and police handled the said chappal. From his version as well as from panchanama Exh.14 and 15 it must be said that pair of chappal was handled by said witness and Police prior to dog tracking. So, the subsequent evidence viz. sniffing the pair of chappal by dog and dog pointing out the accused also creates some doubt. It is pertinent to note that though there was glaring discrepancy in the timing mentioned by the Police Head Constable Shinde in Exh.22 and the timing given by pancha witness and panchanama Exh.15 the prosecution has not at all tried to explain this discrepancy. The said discrepancy cannot be said to be insignificant under the circumstances of the case. Naturally, this discrepancy crates grave doubt about the prosecution case with regard to dog tracking.

30. There is another important aspect of the matter.

Normally, when the accused is not known, in order to have some clue aid of dog squad is taken. In the instant case, it is the prosecution version that they had come to know the name of the assailant because PW 1 Papamiya had seen the accused holding blood stained axe near Rajashree while alleged eye witness PW 3 Sidhram Mote had seen the accused assaulting Rajashree and her daughter with an axe. When such was the position there was in fact no necessity to call the dog squad. It has also come on record that according to Papamiya he had seen accused proceedings towards his house so it was in fact very easy for Sarpanch Papamiya to tell the Police that he had seen the accused proceedings towards his house and as such they should go and trace the accused at his house, but admittedly, no such thing has happened. As per report Exh.22 dog squad had located or identified accused prior to 11-30 a.m.. If really such thing had happened then certainly while lodging complaint at the Police Station the PSI Jadhav would have mentioned in the FIR that dog squad was called and it had traced the accused. But we find that there is absolutely no reference of the dog squad in FIR Exh.32 which is registered at 11-30 a.m. In fact there is no cogent evidence to show that particular police officer had called the dog squad. Admittedly there is no entry in that behalf in Station diary. So, all these lacunas and discrepancies create grave doubt about the prosecution version.

31. It was argued on behalf of prosecution that accused had a grudge against Rajashree as she had developed illicit

relations with Saipan. She had in fact one daughter out of the said relations and she had come to village Kurghot for the purpose of MOHARAM. It is suggested by prosecution that as Rajashree was married to Jaideo, the cousin brother of accused, her illicit relations with Saipan were not liked by the accused and as such he must have committed the murder of Sonabai, Rajashree and Ruksana. Firstly, it has to be mentioned that admittedly, divorce had taken place between Jaideo and Rajashree about 4 years prior to the incident. So, under such circumstances when Rajashree was admittedly not the wife of Jaideo at the relevant time, there was no reason for the accused to have grudge or grievance against Rajashree. Moreover, there is nothing on record to show that accused was having similar grievance about Sonabai. So the prosecution has in fact failed to prove the motive for the crime. Naturally absence of motive is a circumstance which has to be considered against prosecution. crime.

32. Thus from the above discussion it is very clear that there are several material discrepancies and infirmities in the evidence of prosecution. Considering such state of evidence, the learned trial Judge held that the prosecution has failed to prove beyond reasonable doubt that the accused committed murder of Sonabai, Rajashree and Ruksana or anyone of them. The view taken by the trial Court cannot be said to be perverse or even erroneous. It cannot be said that the trial Court has not properly appreciated the evidence on record or has failed to consider any

material evidence. On the contrary the view taken by the learned trial Judge is a possible view. The learned Advocate for the defence has argued before us that view taken by the trial Judge is a possible view and as such there is no need to interfere with the finding of the trial Judge. We feel that there is much substance in this argument because in a case in **Khedu Mohton and others Vs State of Bihar AIR 1971 SC 66** the Apex Court has observed:

> "Though the powers of the High Court in considering the evidence on record in appeals under Sec. 417 are as extensive as its powers in appeals against convictions the Court should bear in mind the presumption of innocence of accused. Where the lower court has found the accused not guilty unless the conclusions reached by it are palpably wrong or based on erroneous view of the law or that its decision is likely to result in grave injustice, the High Court should be reluctant to interfere with its conclusion, if two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal."

33. In the case of **Harijan Megha Jesha V/s State of Gujrat AIR 1979 SCV 1566** it has been observed:

> "If the view taken by the lower Court is not perverse but borne out by evidence on record and reasonably possible then High Court should not reverse order of acquittal by taking different view of evidence.

. Not only that but in in **Tota Singh and others Vs State of Punjab AIR 1987 SC 1083** Their Lordships observed

> "The mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an

> order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

34. Thus, once it is said that in the present case the learned trial Judge has taken into consideration the entire evidence in its proper perspective and view taken by him is certainly a possible view then having regard to the above mentioned legal position, there is no scope for interference with the finding recorded by the trial Court.

35. In this view of the matter, the appeal is dismissed.

(S.R.SATHE,J.) (S.S.PARKAR,J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 113 of 1994

The State of Maharashtra .. Appellant

V/s

Ashok Hanmant Atkar .. Respondent

Smt.V.R.Bhosale,APP for Appellant

Shri A.R.Yadav for Respondent (appointed)

CORAM:S.S.PARKAR & S.R.SATHE,JJ

DATED: 26th September 2005

P.C.:-

. For the reasons recorded separately in the Oral Judgment the court passes the following Order :-

. The appeal is dismissed.

For Addl.Registrar